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October 9, 2014

## *Electronic Filing*

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, D.C. 20554

**Re: *Applications of Comcast Corporation and Time Warner Cable Inc., Charter Communications Inc. and SpinCo, for Consent to Assign Licenses or Transfer Control of Licensees, MB Docket No. 14-57***

Dear Ms. Dortch:

On October 7, 2014, Ken Solomon of The Tennis Channel, Inc. (“Tennis Channel”), met with the following Commission personnel regarding the above-referenced proceeding: Ty Bream, Adam Copeland, Hillary DeNigro, William Lake, Wayne McKee, Jake Riehm, Julie Saulnier, and Johanna Thomas, each of the Media Bureau; Jim Bird, Hillary Burchuk, Virginia Metallo, and Joel Rabinovitz, each of the Office of General Counsel; William Dever, Wireline Competition Bureau; and Tim Brennan, Paul LaFontaine, and (by telephone) William Rogerson, each of the Office of Strategic Planning & Policy Analysis. Mr. Solomon was accompanied by Stephen Weiswasser, Elizabeth Canter, and the undersigned, each of Covington & Burling LLP.

Tennis Channel urged rejection of Comcast’s assertion that adding Time Warner Cable’s (“TWC”) systems would not materially change Comcast’s power to discriminate against unaffiliated programming networks that compete with Comcast-owned programming networks. In addition to expanding—by millions of subscribers—the merged company’s distribution footprint, the proposed transaction would result in the merged company’s domination of all of the top television markets—including New York and Los Angeles. Indeed, the merged company’s presence in many of these key television markets would go beyond even the separate presence of either Comcast or TWC today due to the geographic consolidation that would result from proposed divestiture transactions involving Charter and SpinCo/Greatlands.

Such expansion and consolidation of the nation’s largest MVPD would thereby make it even more difficult for unaffiliated programmers to compete for content rights and advertising dollars and to gain carriage and subscriber fees. The parties explained that it already is exceedingly difficult for an independent network that Comcast does not carry or relegates to a

narrowly penetrated tier to obtain broader carriage from other MVPDs because Comcast is the market leader that other MVPDs often choose to follow. If the merger is consummated, the market leader effect, and therefore the competitive problems created by Comcast's discriminatory treatment, will be even further magnified. Tennis Channel also discussed the ways in which "most favored nations" ("MFN") clauses make it far more difficult for independent programmers to compete successfully.

Tennis Channel noted that, since the Commission's approval of Comcast's acquisition of NBCUniversal, the Commission has had occasion to review Comcast's carriage practices with great care and has specifically found that Comcast engages in discriminatory behavior. Among other things, for example, the Commission found that Comcast carries its own sports networks more broadly, and Tennis Channel more narrowly, than other MVPDs. Tennis Channel provided the attached chart demonstrating that carriage on Comcast systems for most such networks is determined by Comcast's ownership position and that not a single Comcast-owned network is carried on its premium-pay, narrowly penetrated sports tier. Independent networks are carried on the sports tier, even if they are less expensive and the competitive equals of Comcast's owned networks. To address these concerns, Tennis Channel stressed the need for specific, enforceable conditions to prevent Comcast from using its expanded video distribution platform to discriminate against rival programmers, to provide programmers a meaningful remedy in the event Comcast does engage in discrimination, and to protect programmers against retribution by Comcast. The conditions should provide clarity with respect to the applicable standards and the burden of proof on Comcast and provide for a faster and less expensive process. Such conditions need to be imposed for a meaningful period of time.

Finally, the parties emphasized that a vertically-integrated entity like Comcast should not be permitted to limit, either directly or indirectly, an unaffiliated programmers' use of alternative distribution platforms, such as such as over-the-top services or mobile applications. In adopting the 1992 Cable Act, Congress specifically prohibited cable operators from engaging in such anticompetitive conduct vis-à-vis DBS providers, which were just then entering the video distribution market. Particularly in light of the merged company's incentives and greater ability to discriminate against independent programmers and Comcast's history of discriminatory behavior, the merged company should not be permitted to similarly foreclose today's new entrants—such as over-the-top services or mobile applications—through express contractual prohibitions or MFN provisions. The merged company likewise should not be permitted to inhibit new distribution platforms by refusing or impairing authentication of its subscribers for TV Everywhere or similar services that compete with its own TV Everywhere platform. Tennis Channel's own situation is emblematic: for discriminatory reasons, Comcast relegates it to a narrow tier reachable only to a small percentage of Comcast subscribers and at the same time impedes its ability to use alternative means to reach an audience.

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Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

/s/

Gerard J. Waldron

cc: Jim Bird  
Ty Bream  
Tim Brennan  
Hillary Burchuk  
Adam Copeland  
Hillary DeNigro  
William Dever  
Paul LaFontaine  
William Lake  
Wayne T. McKee  
Virginia Metallo  
Joel Rabinovitz  
Jake Riehm  
William Rogerson  
Julie Saulnier  
Johanna Thomas

Attachment

# NATIONAL SPORTS NETWORKS ON COMCAST BY TIER

100% Subs	Comcast Affiliation
Golf Channel	Yes
NBC Sports	Yes
Comcast SportsNet	Yes
ESPN	NO
ESPN2	NO
Fox Sports 1	NO
CBS Sports	NO

50% Subs	Comcast Affiliation
MLB Network	Yes*
NBA TV	Yes**
NHL Network	Yes***
ESPN News	NO
ESPN U	NO
ESPN Classic	NO
NFL Network	NO <sup>^</sup>
TV Games	NO

15% Subs	Comcast Affiliation
beIN Sport	NO
Big Ten Network	NO
Fox College Sports	NO
Fox Soccer Channel	NO
GoTV	NO
HRTV	NO
NFL Red Zone	NO <sup>^^</sup>
Speed	NO
Sportsman Channel	NO
Tennis Channel	NO

## Affiliated with Comcast

- \* Comcast owns 8.3 percent of MLB Network
- \*\* Comcast held equity in NBA TV through its ownership in the National Basketball Association at the time it launched NBA TV on a 50% tier
- \*\*\* Comcast owns 15.6 percent of the NHL Network, and the League provides anchor programming for Versus
- <sup>^</sup> Comcast carries NFL Network pursuant to a settlement of a program carriage dispute.
- <sup>^^</sup> Comcast also sells the HD version of the NFL Red Zone as part of its extra-charge HD package.